

PT 06-37

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**CATHOLIC CHARITIES HOUSING
DEVELOPMENT CORPORATION,
Applicant**

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

No: 05-PT-0044

Real Estate Exemption

**For 2004 Tax Year
P.I.N. 13-34-405-036**

Cook County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Edwin Wittenstein, Worsek & Vihon, LLP, on behalf of the Applicant; Mr. John Alshuler, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether a Cook County parcel, identified by Property Index Number 13-34-405-036 (hereinafter the “subject property”), qualifies for exemption from 2004 real estate taxes under 35 ILCS 200/15-65, which exempts all property owned by a charity and actually and exclusively used for charitable purposes.

The controversy arises as follows: On June 30, 2004, Catholic Charities Housing Development Corporation (hereinafter the “applicant”) applied for a property tax exemption with the Board of Review of Cook County (hereinafter the “Board”). The

Board reviewed the applicant's complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that the applicant be denied an exemption for the subject property for assessment year 2004.

On April 14, 2005, the Department accepted the Board's recommendation finding that the subject property was not in exempt ownership and that the applicant was not the owner of the property in assessment year 2004. On July 24, 2006, the parties submitted a "Stipulation of Facts" and requested a briefing schedule. Following submission and consideration of the "Brief and Argument of Applicant," "Department's Response Brief" and "Applicant's Response Brief," it is recommended that the Department's determination be affirmed.

STIPULATED FINDINGS OF FACT:

1. Catholic Charities Housing Development Corporation ("applicant") applied for an exemption from real estate taxes with the Cook County Board of Review for certain real estate located in Cook County, Illinois and assigned Property Index Number 13-34-405-036.
2. For purposes of this hearing, the parties agree that the applicant is organized exclusively for "charitable purposes" as that term is used within the context of the Illinois Property Tax Code (the "Code") (35 ILCS 200/1 *et seq.*).
3. The Illinois Department of Revenue ("Department") reviewed the determination of the Cook County Board of Review, as required by the Illinois Property Tax Code (35 ILCS 200/1 *et seq.*) and determined, pursuant to its best judgment and information, that the subject real estate was not in exempt ownership and the applicant was not the owner of said real estate.

4. The parties agree, for purposes of this hearing, that Courtland Manor LLC, an Illinois limited liability company, pursuant to the Illinois Limited Liability Company Act (805 ILCS 180/1-1 *et seq.*), is the title-holder of the real estate at issue and that the applicant is the sole member of Courtland Manor LLC and Courtland Manor LLC has not received a notification from the Internal Revenue Service that it qualifies under paragraph (2) or (3) of Section 501(c) of the Internal Revenue Code.
5. The parties agree, for purposes of this hearing, that Courtland Manor LLC was formed for the purpose of receiving an allocation of Low Income Housing Tax Credits pursuant to Section 42 of the Internal Revenue Code of 1986.
6. The Department and the applicant agree, for purposes of this hearing, that Section 15-65 of the Illinois Property Tax Code is controlling with respect to this matter.

CONCLUSIONS OF LAW:

An examination of the record establishes that the applicant has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the subject property from real estate taxes for the 2004 tax year. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not in and of itself grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-3 *et seq.* The Department and the applicant agree that Section 15-65 of the Property Tax Code is controlling with respect to the issue before this tribunal. (Stipulated Finding of Fact, “SFOF,” No. 6). Section 15-65 states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) Institutions of public charity.

Property otherwise qualifying for an exemption under this Section shall not lose its exemption because the legal title is held (i) by an entity that is organized solely to hold that title and that qualifies under paragraph (2) of Section 501(c) of the Internal Revenue Code or its successor, whether or not that entity receives rent from the charitable organization for the repair and maintenance of the property, (ii) by an entity that is organized as a partnership ... , or (iii) for any assessment year including and subsequent to January 1, 1996 for which an application for exemption has been filed and a decision on which has not become final and nonappealable, by a limited liability company organized under the Limited Liability

Company Act, provided that (A) the limited liability company receives a notification from the Internal Revenue Service that it qualifies under paragraph (2) or (3) of Section 501(c) of the Internal Revenue Code; (B) the limited liability company's sole members, as that term is used in Section 1-5 of the Limited Liability Company Act, are the institutions of public charity that actually and exclusively use the property for charitable and beneficent purposes; and (C) the limited liability company does not lease the property or otherwise use it with a view to profit. 35 ILCS 200/15-65.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof upon the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

In the instant case, applicant is unable to prove, by clear and convincing evidence that it falls within the "appropriate statutory exemption." The parties stipulated, for purposes of this hearing, that applicant, Catholic Charities Housing Development Corporation, is organized exclusively for "charitable purposes" as that term is used within the context of the Illinois Property Tax Code. (SFOF No. 2). I will assume, for purposes of argument, that the subject property is "actually and exclusively" used for charitable and beneficent purposes and that the subject property would qualify for an exemption under Section 15-65 of the Property Tax Code.

The parties also stipulated, for purposes of this hearing, that Courtland Manor, LLC, an Illinois limited liability company, pursuant to the Illinois Limited Liability

Company Act (805 ILCS 180/1-1 *et seq.*), is the title-holder of the real estate at issue. (SFOF No. 4). According to 35 ILCS 200/15-65, “[P]roperty otherwise qualifying for an exemption” under the statute does not lose its exemption if legal title is held by another entity as long as the entity holding title fits within certain parameters listed in the statute.

Courtland Manor LLC does not fit within the parameters of 35 ILCS 200/15-65. The parties stipulated that Courtland Manor LLC has not received a notification from the Internal Revenue Service that it qualifies under paragraph (2) or (3) of Section 501(c) of the Internal Revenue Code. (SFOF No. 4). Courtland Manor LLC does not meet the requirements of subsection (i) of 35 ILCS 200/15-65 because it does not qualify under paragraph (2) of Section 501 (c) of the Internal Revenue Code, as required by subsection (i). Courtland Manor LLC does not meet the requirements of subsection (ii) because it is not organized as a partnership. Courtland Manor LLC does not meet the requirements of subsection (iii) because, although it is a limited liability company organized under the Limited Liability Company Act, it has not received notification from the Internal Revenue Service that it qualifies under paragraph (2) or (3) of Section 501 (c) of the Internal Revenue Code. The statute is clear that a limited liability company, holding title to property which might otherwise qualify for an exemption, that has not received notification from the Internal Revenue Service that it qualifies under paragraph (2) or (3) of Section 501 (c) of the Internal Revenue Code, is not entitled to an exemption.

In its “Brief and Argument of Applicant” and “Applicant’s Response Brief,” applicant cites several cases where the Illinois courts have found that legal title is not necessary to qualify for property tax exemptions and that equitable title has been deemed to satisfy the ownership requirement. None of the cases cited specifically address the

issue in the instant case, whether an exemption can be granted to a limited liability company with legal title that does not qualify under paragraph (2) or (3) of Section 501 (c) of the Internal Revenue Code. One of the cases cited by the applicant is Christian Action Ministry v. Department of Local Government Affairs, 74 Ill. 2d 51 (1978) where the Illinois Supreme Court held that equitable ownership is sufficient to warrant a tax exemption. The Court stated: “We are not expanding the area of qualification for tax exemptions. Where the legislature requires legal ownership that obviously must be respected. Where it does not, actual ownership, legal or equitable, is proper.” *Id.* at 63.

Section 15-65 of the Property Tax Code does not require legal ownership by a charitable organization but the legislature’s requirements for the entity holding legal title must be “respected.” An exemption is allowable when legal title is not held by the applicant, but by a limited liability company that has received notification that it qualifies under paragraph (2) or (3) of Section 501 (c) of the Internal Revenue Code. When the language of a statute is clear and unambiguous, a court must give it effect as written without reading into it exceptions, limitations or conditions that the legislature did not express. Garza v. Navistar International Transportation Corp., 172 Ill. 2d 373 (1996). The language of Section 15-65 is clear and unambiguous. If I were to recommend an exemption in this case, I would be “expanding the area of qualification for tax exemptions,” which is a function of the legislature, but not this tribunal.

For these reasons, it is recommended that the Department’s determination that denied the exemption from assessment year 2004 real estate taxes on the grounds that the subject property was not in exempt ownership and that the applicant was not the owner of

the property should be affirmed, and Cook County Parcel, Index Number 13-34-405-036, should not be exempt from assessment year 2004 property taxes.

Kenneth J. Galvin
Administrative Law Judge

November 16, 2006